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90-8.06
No. 90- _____

Supreme Court, U.S.
FILED

NOV 21 1990

JOSEPH E. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

CITY OF WILLCOX, ARIZONA,
ARIZONA ELECTRIC POWER COOPERATIVE, INC.,
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,
AMERICAN PUBLIC GAS ASSOCIATION, and
ASSOCIATED GAS DISTRIBUTORS,

Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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November 21, 1990

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QUESTIONS PRESENTED

1. Whether a Commission regulation authorizing automatic pregranted abandonment of a customer's firm transportation service at the end of its contract with the transporting pipeline constitutes deregulation of abandonments in contravention of Section 7(b) of the Natural Gas Act, 15 U.S.C. § 717f(b)?

2. "Whether Section 7(b) of the Natural Gas Act, 15 U.S.C. 717f(b), permits the Commission to prescribe in advance and on a generic basis the conditions under which the abandonment of services will be authorized, rather than requiring case-by-case adjudication."¹

¹ Brief of the Solicitor General in *FERC v. United Distribution Companies*, Case Nos. 89-1452 and 89-1453, p. (I), Questions Presented.

PARTIES TO THE PROCEEDING

American Iron and Steel Institute

American Paper Institute

Member Companies:

Alabama River Pulp Company
Alpha Cellulose Corporation
American Tissue Corporation
Appleton Papers Inc.
Atlas Paper Mills, Inc.
Augusta NewsPrint Company
Banner Fireboard Company
Bay West Paper Company
Bear Island Paper Company
Big M Paperboard Inc.
Blandin Paper Company
Boise Cascade Corporation
Bowater Incorporated
Caraustar Industries, Inc.
Cellu Tissue Corporation
Champion Int'l Corporation
Chesapeake Corporation
Chicopee
Cleaners Hanger Company
Climax Manufacturing Company
Clinch River Corporation
Consolidated Papers, Inc.
Consolidated Pkg. Corp.
Continental Paper Co., Inc.
Converting, Inc.
Cottrell Paper Company, Inc.
CPM, Inc.
Crane & Co., Inc.
Daishowa America Co., Ltd.
Dennison Manufacturing Company

Detroit River Paper
Dexter Nonwovens Division
Domtar, Inc.
Du Pont - Specialty Imaging
Duni Corporation
E.S. Eddy Paper, Inc.
Eastern Fine Paper, Inc.
EHV Weidmann Industries, Inc.
Equitable Bag Company, Inc.
Erving Paper Mills
Esleeck Mfg. Co., Inc.
Evanite Fiber Corporation
Fairfield Paper Company
Federal Paper Board Co., Inc.
Fiber-Law Inc.
Fibre Leather Mfg. Corp.
Field Container Corp.
Filtration Science Corporation
Finch, Pruyn & Company, Inc.
Fletcher Paper Company
Fort Howard Corporation
Fortifiber Corporation
Fox River Paper Company
Fraser Paper, Limited
Freeman Paper Company
French Paper Company
FSC Paper Company, L.P.
Garden State Paper Co., Inc.
Gaylord Container
Georgia-Pacific Corporation
Gilman Paper Company
Great Northern Nekoosa Corp.
Green Bay Packaging, Inc.
Greif Board Corporation
Gulf States Paper Corporation

Halifax Paper Board Co., Inc.
HallTown Paperboard Company
Hampden Papers Inc.
Hazen Paper Company
Hennepin Paper Company
Hercules Incorporated
Hollingsworth & Vose Company
Holyoke Card & Paper Company
Inland Empire Paper Company
International Paper Company
Interstate Resources, Inc.
ITT Rayonier, Inc.
J.D. Cahill Company, Inc.
Jackson Paper Mfg. Co.
James River Corporation
Jefferson Smurfit Corporation
Jen-Coat, Incorporated
Kanzaki Specialty Papers
Kieffer Paper Mills, Inc.
Lake Superior Paper Industries
Laurel Hill Paper Company
Linweave Fine Papers, Inc.
Little Rapids Corporation
Longview Fibre Company
Los Angeles Paper Box & Board Mills
Louisiana-Pacific Corporation
Ludlow Corporation
Lydall, Inc.
Lyons Falls Pulp & Paper, Inc.
MacMillan Bloedel, Inc.
Macon Kraft, Inc.
Madison Paper Industries
Masistique Papers, Inc.
Manville Forest Prods. Corp.
Marcal Paper Mills, Inc.

McIntyre Paper Company, Inc.
 Mead Corporation
 Media, Inc.
 Menasha Corporation
 Menominee Paper Company, Inc.
 Merrimac Paper Company, Inc.
 Mobinee Paper Corporation
 Mohawk Paper Mills, Inc.
 Monadnock Paper Mills, Inc.
 Nekoosa Packaging, Inc.
 Newman & Company, Inc.
 Newsprint South, Inc.
 Newton Falls Paper Mill, Inc.
 Ondulins U.S.A., Inc.
 Orchids Paper Products - Concel Inc.
 P.H. Glatfelter Company
 Packaging Corp. of America
 Paper Art Company, Inc.
 Paper-Pak Products, Inc.
 Parsons Paper Company
 Pennetech Papers, Inc.
 Pentair, Inc.
 Performance Papers, Inc.
 Plastic Coated Papers, Inc.
 Pope & Talbot, Inc.
 Port Townsend Paper Corp.
 Potlatch Corporation
 Procter & Gamble Cellulose Co.
 Professional Medical Products, Inc.
 Q.A. Reed, Inc.
 Repap U.S.A., Inc.
 Republic Paperboard Company
 Rock-Tenn Company
 Rolland Fitchburg Paper, Inc.
 Roses Southwest Papers, Inc.

Scott Paper Company
 Sealed Air Corporation
 Seaman Paper Company of
 Massachusetts, Inc.
 Simpson Paper Company
 Sonoco Products Company
 Southeast Paper Mfg. Co.
 Southworth Company
 St. Joe Forest Products Co.
 Stevens & Thompson Paper Company.
 Straubel Paper Company
 Sullivan Paper Company
 Tagsons Papers, Inc.
 Technographics, Inc.
 Temple-Inland, Inc.
 The Columbia Corporation
 The Crystal Tissue Company
 The Lincoln Group, Inc.
 The Newark Group, Inc.
 The Procter & Gamble Company
 The Quaker Oats Company

American Public Gas Association

Amoco Production Company

 Parent: Amoco Corporation

 Subsidiaries:

 Amoco Canada Petroleum Company Ltd.

 Amoco Company

 Amoco Credit Corporation

 Analog Device, Inc.

 Cetus Corporation

 ACM Services, Inc.

 Abbott Pipe and Supply Company

 Applied Intelligent Systems, Inc.

 Atlas Supply Company

Automating Peripherals Ltd.
 Blackfeet Indian Writing Co.
 Cyclone Well Service Limited
 Chicago Equity Fund 1985 Partnership
 Chicago Equity Fund 1986 Partnership
 Chicago Equity Fund 1987 Partnership
 Chicago Capital Fund I Limited Partnership
 Dearborn Park Corporation
 De La Fuente
 Gene Ables Excavation and General Construction
 Co., Inc.
 Highland Community Bank
 High Life Helicopter, Inc.
 H-R Industries
 Indiana Pallet Manufacturers Corporation
 Illinois Neighborhood Development Corp.
 Illinois Venture Fund
 Indecorp, Inc.
 Maecorp, Inc.
 Midwest Club
 Panorama Office Park II
 Rocky Mountain Instrument Company
 R/P International Technologies
 Red Man Pipe and Supply Company
 S.I. Tech. Inc.
 Star/Adair Insulation Company
 Tangley Oaks
 200 Park Plaza Associates
 Tenco Hydro, Inc.
 Trout Lake Gold and Country Club
 Urban Enterprises Corporation
 Watson Laboratories, Inc.
 Xinix, Incorporated

Anadarko Petroleum Corporation

ANR Pipeline Company

Apache Powder Company

ARCO Oil and Gas Company a division of Atlantic Richfield Co.

Subsidiaries:

85819 Canada Limited (Canada)
 Agro Internacional, S. de R. L. de C.V. (Mexico)
 Alyeska Pipeline Service Company (Delaware)
 ARCO Channelview, Inc. (Delaware)
 ARCO Chemical Company (Delaware) (including
 its wholly owned subsidiaries)
 ARCO China Inc. (Delaware)
 ARCO Solar Nigeria Ltd. (Nigeria)
 Badger Pipeline Company (Delaware)
 Black Lake Pipe Line Company (Delaware)
 Blair Athol Coal Pty. Limited (Australia)
 Colonial Pipeline Company (Delaware)
 Compania de Petroleo Ganso Azul, Ltda. (Peru)
 Compania Minera Dos Republicas S.A. de D.V.
 (Mexico)
 Cook Inlet Pipe Line Company (Delaware)
 Dixie Pipeline Company (Delaware)
 East Texas Salt Water Disposal Co. (Texas)
 Iricon Agency Ltd. (Delaware)
 Kenai Pipe Line Company (Delaware)
 Kuparuk Transportation Company (Alaska)
 Las Quintas Serenas Water Company (Arizona)
 Logan Aluminum Inc. (Delaware)
 Lyondell Petrochemical Company
 Murlfill Pty., Ltd. (Queensland, Australia)
 Platte Pipe Line Company (Delaware)
 Showa ARCO Solar Far East Pte. Ltd.
 (Singapore)
 Tecumseh Pipe Line Company (Ohio)

Texas-New Mexico Pipe Line Company (Delaware)

Arizona Public Service Company

Parent: Pinnacle West Capital Corporation

Ashland Exploration, Inc.

Arch Mineral Corporation

Atlanta Gas Light Company

Subsidiaries:

Georgia Gas Company

Georgia Engine Sales & Service

Trustees Investments, inc.

Georgia Natural Gas Company

Georgia Gas Service Company

Georgia Energy Company

Baltimore Gas & Electric Company

Subsidiaries:

BNG, Inc.

Constellation Holdings, Inc.

Constellation Development, Inc.

Constellation Investments, Inc.

Constellation Operating Services, Inc.

Constellation Real Estate Group, Inc.

Constellation Water Systems, Inc.

Affiliate:

Safe Harbor Water Power Corporation

Battle Creek Gas Company

**Parent: Southeastern Michigan Gas Enterprises,
Inc.**

Bay State Gas Company

Subsidiaries:

Bay State Exploration, Inc.

Bay State Gas Supply, Inc.

Northern Utilities, Inc.

Granite State Gas Transmission, Inc.

The Berkshire Gas Company

Boston Gas Company

Parent: Eastern Gas and Fuel Associates

The Brooklyn Union Gas Company

Subsidiaries:

Fuel Resources, Inc.

Fuel Resources Gathering, Inc.

Brooklyn Union Exploration Company, Inc.

Gas Energy, Inc.

Methane Development Corporation

Collectaccount Services, Inc.

Star Enterprises, Inc.

Delaware Valley Propane Company

Central Hudson Gas & Electric Corporation

Subsidiaries:

Central Hudson Enterprises Corp.

Central Hudson Cogeneration, Inc.

CH Resources, Inc.

Greene Point Development Corp.

Phoenix Development Co., Inc.

Central Illinois Light Company

Parent: CILCORP, Inc.

Central Illinois Public Service Company

Chesapeake Utilities Corporation

Subsidiaries:

Central Florida Gas Co.

Eastern Shore Natural Gas Co.

Dover Exploration Co.

Skipjack, Inc.

Sharpgas, Inc.

Citizens Gas Fuel Company

City of Holyoke, Mass., Gas & Electric Department

City of Norwich, Department of Public Utilities

City of Westfield Gas & Electric Light Department

CNG Transmission Corporation

Parent: Consolidated Natural Gas Company

Subsidiaries:

The East Ohio Gas Company

The Peoples Natural Gas Company

Hope Gas Inc.

West Ohio Gas Company

The River Gas Company

CNG Producing Company

CNG Development Company

CNG Energy Company

CNG Trading Company

Consolidated System LNG Company

CNG Research Company

CNG Coal Company

Colonial Gas Company

Subsidiary:

Transgas, Inc.

Colorado Interstate Gas Company

Columbia Gas Distribution Companies, Inc.

Parent: Columbia Gas System, Inc.

Columbia Gas Transmission Corporation

Parent: Columbia Gas System, Inc.

Commonwealth Gas Co.

Parent: Commonwealth Energy System

Concord Natural Gas Company

Subsidiary:

Concord Gas Service Corp.

Consolidated Edison Company of New York, Inc.

Consumers Power Company

Parent: CMS Energy Corporation

The Dayton Power and Light Company

Parent: DPL, Inc.

Delmarva Power & Light Company

Subsidiaries:

Delmarva Energy Company

Delmarva Industries, Inc.

Delmarva Capital Investments, Inc.

DCI I, Inc.

DCI II, Inc.

The East Ohio Gas Company

Parent: Consolidated Natural Gas Company

Elizabethtown Gas Company

Parent: NUI Corporation

Elizabethtown, Inc.

Subsidiaries:

EnergyNorth Realty, Inc.

Gas Service, Inc.

Energy Resources Corp.

Manchester Gas Co.

Concord Natural Gas Corp.

Concord Gas Service Corp.

Rent-A-Space of New England, Inc.

EnergyNorth, Inc.

Subsidiaries:

EnergyNorth Realty, Inc.

Gas Service, Inc.

- Energy Resources Corp.
- Manchester Gas Co.
- Concord Natural Gas Corp.
- Concord Gas Service Corp.
- Rent-A-Space of New England, Inc.
- Equitable Gas Company
 - Parent: Equitable Resources, Inc.
- Essex County Gas Company
- Fitchburg Gas & Electric Light Company
 - Subsidiary:
 - Fitchburg Energy Development Co.
- Hope Gas, Inc.
 - Parent: Consolidated Natural Gas Company
- Illinois Commerce Commission
- Illinois Power Company
- Indiana Gas Company, Inc.
 - Parent: Indiana Energy, Inc.
- Inland Gas Company, Inc.
 - Parent: Columbia Gas System, Inc.
 - Affiliate:
 - Columbia Gas Transmission Corporation
- The Kansas Power and Light Company
- Kansas Public Service Division of UtiliCorp
 - United Inc.
- Kokomo Gas and Fuel Company
- Laclede Gas Co.
- Maryland Peoples' Counsel
- Memphis Light, Gas & Water Division, City of Memphis, Tennessee

Michigan Consolidated Gas Company
Parent: MCN Corporation

Michigan Gas Company
Parent: Southeastern Michigan Enterprises, Inc.

Michigan Gas Utilities Company
A division of Utilicorp United Inc.

Michigan Public Service Commission

Missouri Public Service Division of UtiliCorp
United Int.

National Association of Gas Consumers

National Fuel Gas Distribution Corporation
Parent: National Fuel Gas Company, a public
utility holding company

New Jersey Natural Gas Company
Parent: New Jersey Resources Corporation

Niagara Mohawk Power Corporation
Beebee Island Corporation
Canadian Niagara Mohawk Power Company,
Limited

HYDRA-CO Enterprises, Inc.
Indian Lake Dam Holding Company
Moreau Manufacturing Corporation
NITECH Incorporated
NM Uranimum, Inc.
Opinac Energy Corporation
Opinac Holdings Limited
Opinac Exploration Limited

North Carolina Natural Gas Corporation
Subsidiaries:

NCNG Exploration Corp.
Cape Fear Energy Corp.

Northeast Utilities

Subsidiaries:

The Connecticut Light and Power Company
 Western Massachusetts Electric Company
 Holyoke Water Power Company
 Northeast Nuclear Energy Company
 The Rocky River Realty Company
 The Quinnehtuk Company
 Northeast Utilities Service Company

Northern Illinois Gas Company

Parent: NICOR, Inc.

North Shore Gas Company

Parent: Peoples Energy Corporation

Northern States Power Company (Wisconsin)

Northern States Power Company (Minnesota)

Northern Utilities, Inc. (see Bay State Gas Company)

Office of the Consumers' Counsel, State of Ohio
 Ohio Gas Company

ONG Transmission Company

A division of: ONEOK Inc.

Orange & Rockland Utilities, Inc.

Pacific Gas & Electric Company

Subsidiaries:

PG&E-Corporate

Pacific Gas & Electric Company
 Mission Trail Insurance (Cayman), Ltd.
 Pacific Energy Fuels Company
 Distribution Business Unit
 Pacific Conservation Services Company
 Gas Supply Business Unit
 Alberta and Southern Gas Company, Ltd.

Calaska Energy Company
 Eureka Energy Company
 Natural Gas Corporation of California
 NGC Production Company
 Pacific California Gas System, Inc.
 Pacific Gas Properties Company
 Pacific Gas Transmission Company
 Alberta Natural Gas Company Ltd.
 ANG Liquids, Ltd.
 ANG Processing, Ltd.
 CanStates Holdings, Inc.
 ANGUS Chemical Company
 ANGUS Chemie GmbH
 ANGUS Fine Chemicals Ltd.
 ANGUS International, Ltd.
 CanStates Energy, Inc.
 CanStates Hydrocarbons, Inc.
 Rankin Petroleum, Inc.
 Rankin Petroleum Marketing, Ltd.
 Foothills Pipe Lines (South B.C.) Ltd.
 International Permeation, Inc.
 Magnesium Company of Canada, Ltd.
 Pacific Northwest Gas System, Inc.
 Rocky Mountain Gas Transmission Company
 Standard Pacific Gas Line Incorporated
 Non-Utility Business Unit
 PG&E Enterprises
 ANGUS Petroleum Corporation
 Brodia Enterprises
 Falcon Power Corporation
 Goshawk Power Corporation
 Harrier Power Corporation
 Osprey Power Corporation
 PG&E-Bechtel Generating Company (Jt.
 Venture)

PG&E Properties, Inc.
BPS I, Inc.
PG&E Resources Company
Kestrel Power Corporation
Peregrine Power Corporation
Red Tail Power Corporation
Toyan Enterprises

Pennsylvania Gas & Water Company
Parent: Pennsylvania Enterprises, Inc.

Pennsylvania Public Utility Commission

The Peoples Gas Light & Coke Company
Parent: Peoples Energy Corporation

Peoples Natural Gas Company
Division of UtiliCorp United Inc.

The Peoples Natural Gas Company
Parent: Consolidated Natural Gas Company

Pequot Gas Co.

Phelps Dodge Corporation

Philadelphia Electric Company
Subsidiaries:

Adwin Equipment Company
Adwin Realty Company
Conowingo Power Company
Eastern Pennsylvania Development Company
Eastern Pennsylvania Exploration Company
Philadelphia Electric Power Company
The Susquehanna Electric Company
The Susquehanna Power Company

Philadelphia Gas Works

Providence Gas Company

Parent: Providence Energy Corporation

Public Service Commission of the State of New York

Public Service Company of North Carolina, Inc.

Subsidiaries:

PSNC Natural Resources Corporation

Tar Heel Energy Corp.

PSNC Production Corp.

PSNC Exploration Corp.

PSNC Propane Corp.

Public Service Electric & Gas Company

Subsidiaries:

Energy Pipeline Corporation

Energy Terminal Services Corporation

Mulberry Street Urban Renewal Corporation

PSE&G Overseas Finance N.V.

PSE&G Research Corporation

Public Services Resources Corp.

Community Energy Alternatives, Inc.

Energy Development Corporation

Gasdel Pipeline System, Inc.

Richmond Gas Corporation

The River Gas Company

Parent: Consolidated Natural Gas Company

Rochester Gas and Electric Corporation

Salt River Project Agricultural Improvement and
Power District

South County Gas Co.

South Jersey Gas Co.

Parent: South Jersey Industries, Inc.

Southeastern Michigan Gas Company

Parent: Southeastern Michigan Enterprises, Inc.

Southern California Gas Company

Parent: Pacific Enterprises

Subsidiaries:

Pacific Lighting International Finance, N.V.

**Southern California Gas International Finance,
N.V.**

Southern California Gas Tower

Affiliates:

Pacific Lighting Capital Company N.V.

Pacific Lighting Gas Development Company

Pacific Lighting Overseas Finance N.V.

Pacific Synthetic Fuel Company

Pacific Western Resources Company

**Southern California Conservation Financing
Co.**

Pacific Center Downtown, Inc.

Pacific Lighting Corporation

Pacific Library Tower

Pacific Lighting Land Company

Sabagli N.V.

Pacific Enterprises Oil Company

(formerly Pacific Enterprises Oil and Gas Co.)

Pacific Gas Gathering Company

Pacific Enterprises Oil Company (Netherlands)

(formerly Pacific Enterprises Oil Company)

Terra Resources, Inc.

Pacific Enterprises Oil Company (Canada)

Sabine Corporation

Dalco Oil Company

Oakwood Corporation

Sabine Canada, Inc.

Sabine Columbia Corporation

Sabine Processing Company

Sabine Royalty Corporation

Pacific Interstate Company

Pacific Interstate Mojave Company
 Pacific Interstate Offshore Company
 Pacific Interstate Transmission Company
 Pacific Interstate Transmission Company
 (Arctic)
 Pacific Offshore Pipeline Company
 Pacific Enterprises Leasing Company
 Pacific Enterprises Commercial Loans, Inc.
 Pacific Lighting Real Estate Group
 Presley ASW Finance Co., Inc.
 Presley Financial Corporation
 Presley-Home Mac Finance Co., Inc.
 Presley RAC Finance Co., Inc.
 Thrifty Corporation
 FTM Sports Corporation
 American Diversified Sports, Inc.
 Gart Bros. Sporting Goods Company
 Colorado Wholesale Sporting Goods Co., Inc.
 Sports Castle Travels, Inc.
 Michigan Sporting Goods Distributors, Inc.
 Brown's Sporting Goods, Inc.
 M M Winter Sports, Inc.
 Morrie Mages Sports of Arlington Heights,
 Inc.
 The King of Sporting Goods, Inc.
 The Queen of Elizabeth Street, Inc.
 Sports Castle, Inc.
 Rexal Square Drugs, Inc.
 The Newman Importing Company, Inc.
 Thrifty Wilshire, Inc.
 United Merchandising Corp.
 Pay 'n Save Drug Stores, Incorporated
 Pay 'n Save Realty Corp.
 Star Productions, Inc.
 Bi-Mart Corporation

Bi-Mart Realty Corp.
Pacific Energy
Central Plant, Inc.
Pacific Energy Resources Incorporated
Pacific Wood Power
Pacific Geothermal Company
Mammoth Geothermal Power Company
Pacific Hydropower Company
Western Power, Inc.
Pacific Bio-Energy Company
Pacific Oroville Power, Inc.
Pacific Penobscot Power Company
Pacific Recovery Corporation
Pacific Wood Fuels Company
8309 Tujuga Avenue Corp.
Pacific Wood Power

The Southern Connecticut Gas Co.
Parent: Connecticut Energy Corp.

Southern Union Gas Company, a division of Southern
Union Company

State of Michigan

Sun Refining and Marketing Company

UGI Corporation

Subsidiaries:

AmeriGas, Inc.
AP Propane
Shwartz Carbonic Company
Industrial Gases, Inc.
Picar, Inc.
AmeriLease, Inc.
ANSUTECH, Inc.
Matheson Gas Products, Inc.

Matheson Gas Products Canada, Inc.
 UGI Development Company
 Ashtola Production Company
 International Petroleum Service Company
 Keystone Oilfield Supply Co.
 Stimwell Services Company
 B&L Services Company
 Universal Well Services, Inc.
 Target Cementing Co.
 UGID Holding Company
 Triad Drilling Company
 Union Supply Company
 Wellhead Compressor Packagers Company
 Wellhead Finance Co.
 Cryotex, Inc.
 Heavy Media, Inc.
 Four Flags Drilling Company, Inc.
 Tri-Four, Inc.
 UGID Drilling Company
 UGID Drilling Investing Company
 UGI Ethanol Development Corporation
 SAM's Well Service, Inc.
 Development Leasing Corporation
 Physicians Technology Corporation
 Capital Housing, Inc.
 Skyten Corporation
 UGI Realty Company
 UGI Finance N.V.
 Union Electric Company
 United Cities Gas Company
 Valley Gas Co.
 Parent: Valley Resources, Inc.
 Virginia Natural Gas, Inc.

Washington Gas Light Co.

Subsidiaries:

Crab Run Gas Co.

Davenport Insulation, Inc.

Frederick Gas Co., Inc.

Hampshire Gas co.

Shenandoah Gas Co.

Brandywood Estates, Inc.

Washington Gas Approved Services, Inc.

Rock Creek Properties, Inc.

Utilitrol

West Ohio Gas Company

Parent: Consolidated Natural Gas Company

Wisconsin Fuel and Light Company

Wisconsin Gas Company

Parent: WICOR, Inc.

Wisconsin Natural Gas Company

Parent: Wisconsin Energy Corporation

Wisconsin Southern Gas Company

Yankee Gas Services Company

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1990

No. 90- _____

CITY OF WILLCOX, ARIZONA,
ARIZONA ELECTRIC POWER COOPERATIVE, INC.,
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,
AMERICAN PUBLIC GAS ASSOCIATION,
and ASSOCIATED GAS DISTRIBUTORS,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

**PETITION FOR WRIT OF CERTIORARI
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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

City of Willcox, Arizona, Arizona Electric Power Cooperative, Inc., Consolidated Edison Company of New York, Inc. American Public Gas Association and Associated Gas Distributors (jointly Petitioners) were petitioners below in the "Joint Initial Brief of Indicated Local Distribution Companies, State Commissions, State Agencies, and End Users, on Issue of Pregranted Abandonment of Firm Service". Petitioners petition for a writ of certiorari to review the decision of the United States Court of Appeals

for the District of Columbia Circuit below in *American Gas Association, et al. v. FERC*, 912 F.2d 1496 (Appendix A).²

The decision of the Court below remanded Order Nos. 500-H and 500-I of the Federal Energy Regulatory Commission (FERC or Commission) issued in a rulemaking proceeding entitled "Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol", Docket No. RM87-34-000.

In these Orders, the Commission has provided interstate pipelines with "pregranted abandonment" authority to terminate transportation service provided under the Natural Gas Act (NGA), 15 U.S.C. §717, *et seq.*, at the expiration of individual transportation contracts. The Court below affirmed the statutory power of the Commission to grant this authority but held the Order deficient for failure of reasoned decision making. The Court did not vacate the "pregranted abandonment" regulation. Rather, it remanded Order Nos. 500-H and 500-I to the Commission with instructions to either change the rule or make new findings to support it. The Court set a 90 day time limit on Commission action. Thus, the regulation permitting pregranted abandonment, 18 C.F.R. §284.221(d) (App.E), has survived the decision of the Court below and is currently in effect. The affirmance by the Court below of FERC's statutory power to authorize pregranted abandonment by generic rule, therefore, is final and ripe for Supreme Court review.

ORDERS AND OPINIONS BELOW

The Order of the United States Court of Appeals for the District of Columbia Circuit is reported at 912

² References to the Appendix shall be designated (App. ____).

F.2d 1496 (D.C. Cir. 1990) and is reprinted in Appendix A. The Orders of the Commission are reported as follows: Order No. 500-H, 54 Fed. Reg. 52,344 (Dec. 21, 1989), III FERC Stats. & Regs. (CCH) ¶30,867; Order No. 500-I, 55 Fed. Reg. 6,605 (Feb. 26, 1990), III FERC Stats. & Regs. (CCH) ¶30,880, and are reprinted in Appendices B and C, respectively.

JURISDICTION

The judgment of the Court of Appeals (App. A) was entered on August 24, 1990. The mandate of the Court below was issued on November 15, 1990.

The jurisdiction of this Court is invoked under Section 19(b) of the NGA, 15 U.S.C. §717r(b), and 28 U.S.C. §1254(1).

PROVISIONS OF STATUTES AND REGULATIONS

The Statute upon which the Court of Appeals' decision was based is the Natural Gas Act, 15 U.S.C. §§717, *et seq.*, relevant portions of which appear in Appendix D. The Regulations involved are contained in 18 C.F.R. §§284.10 and 284.221 and appear in Appendix E.

STATEMENT OF THE CASE

The protection of ultimate consumers of natural gas (and the communities in which they are located) against deprivation of continued service is the most important statutory duty committed to the Commission by the Natural Gas Act. *Sun Ray Mid-Continent Oil Co. v. FPC*, 239 F.2d 97, 101 (10th Cir. 1956), *rev'd on other grounds*, 353 U.S. 944 (1957); *United*

Gas Pipe Line Co. v. McCombs, 442 U.S. 529, 536 (1979); *Sun Ray Mid-Continent Oil Co. v. FPC*, 364 U.S. 137, 143 (1960). Prior to the promulgation of the FERC's Order Nos. 436-500 series, a pipeline could only terminate service to local distributors and direct users of natural gas—once it had been commenced—pursuant to a specific finding by the Commission, made after “due hearing” under Section 7(b),³ that the termination of service is in the public interest. *United Gas Pipe Line Co. v. McCombs*, 442 U.S. 529 (1979).

On October 9, 1985, in response to the effect of partial wellhead decontrol under the Natural Gas Policy Act (NGPA), 15 U.S.C. §§3301, *et seq.*, 92 Stat. 3368, FERC promulgated Order No. 436.⁴ Order No. 436 established an “open access” regime for interstate pipelines. It provided, in pertinent part, that a

³ Section 7(b) of the Natural Gas Act provides that:

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval first had and obtained, after due hearing, and a finding by the Commission . . . that the present or future public convenience or necessity permit such abandonment.

(App. D, p. 346a)

⁴ *Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol* (Order No. 436), Docket No. RM85-1-000, III FERC Stats. & Regs. (CCH) ¶30,665 (1985); Order No. 436-A, III FERC Stats. & Regs. (CCH) ¶30,675 (1985), *rev'd sub nom. Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied*, 108 S.Ct. 1468 (1988); Order No. 500, III FERC Stat. & Regs. (CCH) ¶30,761 (1987), *remanded sub nom. American Gas Association v. FERC*, 888 F.2d 136 (D.C. Cir. 1989).

pipeline could obtain a "blanket certificate" under NGA §7 to provide gas transportation service to any entity who desires such service. 18 C.F.R. §284, Subpart G. Order No. 436 also provided in Part 284, Subpart A, that existing firm sales customers of open access interstate pipelines could convert their firm sales entitlements to an equivalent volume of firm transportation. Further, it provided in Part 284, Subpart G, that services commenced under a blanket certificate were subject to pregranted abandonment at the end of the contract term. In *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1044 (D.C. Cir. 1987), *cert. denied*, 108 S.Ct. 1468 (1988), the United States Court of Appeals for the District of Columbia Circuit vacated Order No. 436 because certain errors unrelated to pregranted abandonment tainted the entire Order.

On remand, the Commission in the Order No. 500 series repromulgated many of the regulations originally included in Order No. 436. These regulations included Section 284.221(d), which provided pregranted abandonment authority at the end of the contract term of every individual transportation arrangement authorized under a blanket transportation certificate. After issuance of Order No. 500, the Commission held that the pregranted abandonment regulation it had previously promulgated applied to converted firm transportation.⁵ In Order Nos. 500-H and 500-I, the Commission reaffirmed its position that the pregranted abandonment regulation applied to all transportation arrangements authorized under a blan-

⁵ *Transcontinental Gas Pipe Line Corp.*, 44 FERC ¶61,105 (1988).

ket certificate including those converted from firm sales entitlements.⁶

Petitioners, City of Willcox, Arizona and Arizona Electric Power Cooperative, Inc. are, respectively, a local distribution company (LDC) and an end user of natural gas. Petitioner, Consolidated Edison Company of New York, Inc. is both an LDC and an end user of natural gas. Petitioner, Associated Gas Distributors is an *ad hoc* association of 40 LDC's from Florida to Maine, serving approximately 25 million consumers. Petitioner, American Public Gas Association is an association of publicly owned LDC's.

Petitioners filed timely applications for rehearing of Order No. 500-H. Petitioners' applications for rehearing were denied on February 12, 1990, when the Commission issued Order No. 500-I, in which it denied rehearing of all issues raised by Petitioners. 55 Fed. Reg. 6,605. Petitioners filed timely petitions for review under §19(b) of the NGA with the U.S. Court of Appeals for the District of Columbia Circuit. Petitioners' petitions for review were consolidated with all other petitions for review of Order Nos. 500-H and 500-I.

The Court below issued its opinion denying Petitioners' petition for review on August 24, 1990. On the issue of pregranted abandonment authority,

⁶ The regulations promulgated in Order No. 436 did not expressly address the issue of whether converted firm transportation is subject to pregranted abandonment. In the Court below, FERC argued that it had addressed this issue in Order No. 436 and the petitioners were now barred from raising this issue. The Court below properly rejected this argument. (App. A, pp. 35a-36a).

the Court rejected Petitioners' contention that the Commission had unlawfully delegated the abandonment decision to interstate pipelines in contravention of its responsibilities under Section 7(b) of the NGA to examine all public interest considerations raised in case specific applications for abandonment. (App. A, pp. 36a-38a). The Court attempted to distinguish *Mobil Oil Exploration and Producing Southeast v. FERC*, 885 F.2d 209 (5th Cir. 1990), *cert. granted sub nom. FERC v. United Distribution Companies*, 110 S.Ct. 2585 (Case No. 88-1453), a decision in which the United States Court of Appeals for the Fifth Circuit rejected an analogous Commission regulation authorizing pregranted abandonment of sales by producers of natural gas to interstate pipelines. Although the Court below affirmed the Commission's power to implement pregranted abandonment in a generic rule-making, the Court below remanded the case because the Commission had not adequately justified the rule's application to all forms of transportation arrangements. (App. A, pp. 42a-43a). The Court did not vacate the subject regulation, and it is still in effect.

REASONS FOR GRANTING WRIT

The Court's affirmance of the Commission's power to authorize pregranted abandonment in a generic rulemaking, without review of the specific facts and impacts of the abandonment in individual cases, is contrary to the express requirements of Section 7(b) of the Act, is in conflict with a decision of the Fifth Circuit currently pending before this Court, and will have the effect of risking the continuance of essential gas service to natural gas consumers throughout the country. The Court's holding threatens to undermine

the basic protection afforded to consumers against the exercise of monopoly power by natural gas pipelines—and to subordinate consumers' right to the continuation of essential gas service to the economic interests of pipelines.

At stake here is nothing less than the fate of reliable natural gas transportation service, which is needed to keep homes, schools and hospitals warm, factories open and local communities functioning. Service to over 50 million natural gas consumers has been placed in jeopardy by a Commission rule abdicating to the unfettered discretion of pipeline monopolies the determination of whether service to particular customers will continue.

In its zeal to infuse competition into the natural gas market place, the Commission has abdicated its responsibility to protect the precise persons whom the Natural Gas Act was designed to protect. *See FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 610, 612 (1944). In the Order No. 436/500 series, the Commission has implemented a program which is intended to allow consumers a greater choice among gas suppliers. As a result of open access transportation, consumers are no longer dependent on pipelines for their gas supply. However, pipeline customers remain dependent on the pipeline to transport gas to their service area. New entry is limited both by the NGA's certificate requirements and the practical limits imposed by the immense costs of building new pipelines. Allowing pipelines to abandon transportation service to their customers at the expiration of their contracts will effectively place customers at the mercy of the pipeline. In short, even with open access, pipelines have retained their monopoly over transportation ser-

vice and with the power of pregranted abandonment will be able to exercise their monopoly power unrestrained by any regulatory oversight.

A. In Contravention of Prior Rulings of This Court, The Commission Has Substantially Restricted the Public Interest Standard of Section 7(b) by Foreclosing Inquiry into Case-Specific Facts

Section 7(b) of the Natural Gas Act prohibits an abandonment of service absent a finding made by the Commission after "due hearing" that the "present or future public convenience and necessity permit such abandonment." Prior to the Commission's change in regulatory direction, the Commission had held case-specific adjudicatory proceedings in order to strike the judicially required balance between the interests of existing customers in continued service and the interests of new customers who would receive the abandoned gas supply or pipeline transportation capacity. See *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204, 214-15 (D.C. Cir.), cert. denied, 364 U.S. 913 (1960).

This Court has held that under former section 1(18) of the Interstate Commerce Act (which is *in pari materia* with the NGA) there must be prior case-specific regulatory scrutiny of the relevant facts surrounding a given proposed abandonment to protect existing beneficiaries of service. *Chicago & Northwestern Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 320-22 (1981); *Colorado v. United States*, 271 U.S. 153, 166-68 (1926).⁷ As in initial certificate determinations made under NGA Section 7(c), the Commission must consider all factors relevant to the determination of which course best promotes the over-

⁷ These holdings are compelling because Section 7(b) of the

all public interest. *Transcontinental Gas Pipe Line Corp. v. FPC*, 365 U.S. 1 (1961).

The Court below held that the requirements of Section 7(b) were met by the Commission's exercise of its abandonment authority in advance, on the basis of generic industry-wide legislative-type facts and policy determinations made in a rulemaking proceeding. This type of industry-wide rule cannot, by definition, consider the unique circumstances of each pipeline, each customer to be abandoned, and each beneficiary of the abandoned gas supply or pipeline transportation capacity. A rulemaking proceeding based on so-called legislative facts and policy considerations results in a preauthorization of abandonments when the public interest factors to be balanced are not yet known.

The very nature of the public interest inquiry required under Section 7(b) renders the use of generic rulemaking proceedings unlawful because no opportunity is provided in such a proceeding for affected parties to protect their interest in continued service by raising issues of material fact concerning the effects of the proposed abandonment. By sanctioning the Commission's assertion of power to permit abandonments years in advance without any case-specific factual inquiry, the Court's decision below unlawfully permits the Commission to circumscribe the public interest inquiry required by Congress in Section 7(b).

Gas Act parallels and was patterned after former Section 1(18) of the Interstate Commerce Act. *Sunray Mid-Continent Oil Co. v. FPC*, 364 U.S. 137, 141-42 n.9.

B. The Court's Decision Conflicts with a Decision of the United States Court of Appeals for the Fifth Circuit.

Currently pending before this Court is the decision of the United States Court of Appeals for the Fifth Circuit in *Mobil Oil Exploration and Producing Southeast v. FERC*, 885 F.2d 209 (5th Cir. 1990), cert. granted sub nom. *FERC v. United Distribution Companies*, 110 S.Ct. 2585 (Case No. 89-1453). In *Mobil*, the Fifth Circuit reviewed a pregranted abandonment regulation analogous to the regulation at issue here. Both the regulations at issue in *Mobil* and in this case authorize pregranted abandonment on a generic basis without any case-specific findings that future abandonments would be in the public interest. The regulation challenged in *Mobil* was issued as part of a program designed to allow for the negotiation of new gas prices between producers and pipelines. Under the Order No. 451 program,⁸ producers were provided with pregranted abandonment authority to terminate gas supply contracts when the producer and pipeline could not reach agreement after a "good faith negotiation".⁹

⁸ III FERC Stats. & Regs. (CCH) ¶30,701 (1986).

⁹ The regulation rejected in *Mobil*, Section 157.301(b) provides:

Any first seller who sells natural gas under the blanket certificate authority of paragraph (a) of this section is authorized to abandon the sale upon termination of the contract under which the sale is made.

Id. at 221.

Section 284.221(d) provides:

Pursuant to Section 7(b) of the National Gas Act abandonment of transportation services is authorized upon the expiration of the contractual term of each individual

The Fifth Circuit held that this pregranted abandonment regulation constituted an unlawful abdication of the Commission's responsibility under Section 7(b) to ensure that an abandonment of service is in the public interest. Relying on this Court's decision in *United Gas Pipe Line Co. v. McCombs*, 442 U.S. 529 (1979), the Court found that by failing to provide for a factual inquiry into the circumstances of actual abandonments, the pregranted abandonment provision would impermissibly allow producers to control the abandonment decision. *Mobil*, 885 F.2d at 222-23.

The Court below attempted to distinguish the instant case from *Mobil* and *McCombs*. It reasoned that even if the NGA prohibits unilateral pregranted abandonment, the instant rule does not provide for pregranted abandonment because abandonment is permitted only at the expiration of the contract mutually agreed to by pipeline and customer. (App. A., pp. 37a-38a). This is a distinction without a difference. In *Mobil*, producers were given pregranted abandonment authority upon a pipeline's refusal to accept a producer's nomination of a new, above-market ceiling price.¹⁰ In the instant regulation, pipelines are given the same authority whenever a customer refuses to accede to *any* of the pipeline's demands at the end of the contract.¹¹ Customers have not "agreed" to

transportation arrangement authorized under a certificate granted under this section.

¹⁰ 885 F.2d at 217.

¹¹ The pregranted abandonment regulation challenged herein is in fact more one-sided than the regulation rejected in *Mobil*. Section 284.221(d) does not obligate the pipeline to enter into good faith negotiations with a customer for an extension of the contract's term.

the cessation of service because the setting of a contract's term is within the discretion of the pipeline in the first instance. As the Court below noted in connection with its remand, pipelines have market power over their transportation customers and command whatever terms they wish from their customers unless restricted by NGA regulation. Pregranted abandonment gives them a club to use in exploiting that power. The Commission's statutory obligation under Section 7(b) is to protect customers from precisely this type of abuse of monopoly power. *Hope, supra*; *McCombs, supra*.

Notwithstanding the attempted distinction made by Court below, the holdings of the Fifth and D.C. Circuits are in conflict. In its Petition for a Writ of Certiorari to review the Fifth Circuit's decision in *Mobil*, the Solicitor General framed the question presented as follows:

Whether the Commission correctly concluded that the Natural Gas Act permits the Commission to prescribe conditions under which abandonment of services is authorized on a generic basis, rather than requiring case-by-case adjudication.

The Fifth Circuit answered that question in the negative, holding that an across the board preauthorized abandonment provision which failed to allow for factual inquiry into the circumstances of an abandonment unlawfully delegated the abandonment decision to the producer. The Court below answered the same question in the affirmative, holding that the Commission was within its statutory power to preauthorize abandonments of service on a generic basis.¹²

¹² See also *Panhandle Eastern Pipe Line Co. v. FERC*, 907

C. *The Harm to the Public Interest Arising from the Ruling of the Court Below Requires This Case to be Considered Simultaneously with the Ruling of the Fifth Circuit in Mobil.*

Petitioners respectfully request that this Court issue a writ of certiorari to review the decision below so that the Court can consider the decisions of both the Fifth and D.C. Circuit Courts of Appeals at the same time. The power exercised by the Commission in both instances is the same. The statutory foundation for the assertion of power, Section 7(b) of the Natural Gas Act, in both instances is the same. Consequently, a decision in the *Mobil* case may have a precedential effect on the decision below. The Court should be aware of the effect that its ruling in *Mobil* could have on the Commission's use of its asserted power to order pregranted abandonment in the different context presented by pipeline (as opposed to producer) abandonments of service.

In *Mobil*, the Fifth Circuit rejected the pregranted abandonment regulation at issue because the rule would have provided producers with pregranted authority to abandon gas sales to pipelines. The Court below sanctioned the Commission's power to provide pipelines with pregranted authority to abandon transportation service to its customers. The adverse impact on natural gas consumers arising from the latter exercise of this asserted power is considerably greater than from the former. While producer abandonment

F.2d 185, 188 (D.C. Cir. 1990), where the D.C. Circuit, per Judge Williams, the author of the Opinion below, expressly held that, "to the extent that the *Mobil* court reads *United Gas Pipe Line Co. v. McCombs* . . . as barring *any* provision for generic pregranted abandonment, we disagree." (emphasis in original).

of pipeline supply will eventually adversely affect the quality and cost of service provided to consumers, continuation of service to residential consumers would not be in immediate jeopardy because consumers in most cases would have access to other (albeit higher priced) gas supply.

The effect of the instant regulation is in fact much more harmful to the public interest. It would permit a direct and immediate termination of gas service to local distribution companies (LDCs) and their residential and commercial consumers without any regulatory oversight. In contrast to a *producer* abandonment of *sales* service to pipelines, a *pipeline* abandonment of *transportation* service to its LDC and other direct customers would effectively preclude these customers from obtaining gas service.

Consequently, the Court should have before it both regulations when it resolves this important aspect of natural gas regulation. Petitioners, therefore, respectfully request that the Court grant a writ of certiorari to review the decision of the District of Columbia Circuit and that it consolidate this case with the pending appeal in Case Nos. 89-1452 and 89-1453.¹³

CONCLUSION

For the reasons stated above this Court should grant Petitioners' petition for writ of certiorari to review the decision below of the United States Court of Appeals for the District of Columbia Circuit and

¹³ At a minimum, Petitioners request the Court to grant a *writ of certiorari* and deter action on the writ pending decision in Case Nos. 89-1452 and 89-1453 so that it may take appropriate action in the light of that decision.

consider the legality of the orders below together with those pending before it in *Mobil*.

Respectfully submitted,

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